

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES LUEDTKE,

Plaintiff,

v.

CIOLLI, *et al.*,

Defendants.

Case No. 1:20-cv-00406-NONE-BAM (PC)

AMENDED ORDER VACATING FINDINGS
AND RECOMMENDATIONS REGARDING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION
(ECF No. 9)

ORDER DENYING PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION AS
MOOT
(ECF No. 7)

ORDER GRANTING PLAINTIFF'S MOTION
TO PROCEED *IN FORMA PAUPERIS*
(ECF No. 13)

ORDER DIRECTING PAYMENT OF
INMATE FILING FEE BY USP ATWATER

Plaintiff James Luedtke ("Plaintiff") is a federal prisoner proceeding *pro se* in this action filed pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff initiated this action on March 19, 2020, together with a motion to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF Nos. 1, 2.)

On March 19, 2020, the Court denied Plaintiff's motion to proceed *in forma pauperis*, without prejudice, as incomplete, due to Plaintiff's failure to submit a certified copy of his trust account statement and to have the certification section of the form completed by the institution of

1 incarceration. (ECF No. 5.) Plaintiff was directed to file a completed application within thirty
2 days from the date of service of that order. (Id.)

3 On April 3, 2020, Plaintiff filed a motion requesting a court order directing Defendant
4 Ciolli or one of his subordinates to send the Court the requested copy of Plaintiff's trust account
5 statement. (ECF No. 7.) On April 7, 2020, the Court construed the request as a motion for
6 preliminary injunction, and issued findings and recommendations that Plaintiff's motion be
7 denied for lack of jurisdiction. (ECF No. 9.) Those findings and recommendations were served
8 on Plaintiff and contained notice that any objections were to be filed within fourteen (14) days
9 after service. (Id. at 4–5.) The Court also ordered the Clerk of the Court to forward a copy of the
10 order to the Warden's Office and Litigation Coordinator at Plaintiff's current institution, and
11 extended the deadline for Plaintiff to submit a completed *in forma pauperis* application by thirty
12 (30) days from the date of service of those findings and recommendations. (Id. at 4.)

13 On April 27, 2020, Plaintiff filed a renewed motion to proceed *in forma pauperis*, together
14 with a copy of his inmate trust account statement. (ECF No. 13.) As Plaintiff has now obtained
15 the required copy of his inmate trust account statement, it appears Plaintiff's motion for
16 preliminary injunction, as well as the Court's findings and recommendations that the motion
17 should be denied, are now moot.

18 Upon review of the renewed application, the Court finds Plaintiff has made the showing
19 required by § 1915(a) and accordingly, the request to proceed *in forma pauperis* will be granted.
20 Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C.
21 § 1915(b)(1). Plaintiff is obligated to make monthly payments in the amount of twenty percent
22 (20%) of the preceding month's income credited to Plaintiff's trust account. The Warden of USP
23 Atwater is required to send to the Clerk of the Court payments from Plaintiff's trust account each
24 time the amount in the account exceeds \$10.00, until the statutory filing fee is paid in full. 28
25 U.S.C. § 1915(b)(2).

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. The April 7, 2020 findings and recommendations regarding Plaintiff's motion for
28 preliminary injunction, (ECF No. 9), are VACATED;

2. Plaintiff's motion for preliminary injunction, (ECF No. 7), is DENIED as moot;
3. Plaintiff's application to proceed *in forma pauperis*, (ECF No. 13), is GRANTED;
4. The Warden of USP Atwater or his or her designee shall collect payments from Plaintiff's prison trust account in an amount equal to twenty per cent (20%) of the preceding month's income credited to the prisoner's trust account and shall forward those payments to the Clerk of the Court each time the amount in the account exceeds \$10.00, in accordance with 28 U.S.C. § 1915(b)(2), until a total of \$350.00 has been collected and forwarded to the Clerk of the Court. The payments shall be clearly identified by the name and number assigned to this action;
5. The Clerk of the Court is directed to serve a copy of this order and a copy of Plaintiff's *in forma pauperis* application on the Warden of USP Atwater; and
6. The Clerk of the Court is directed to serve a copy of this order on the Financial Department, U.S. District Court, Eastern District of California.

IT IS SO ORDERED.

Dated: May 19, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE